

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

ELBRYAN D. NEAL, )  
 )  
 Petitioner, )  
 )  
 vs. ) No. CIV-17-596-C  
 )  
 JOE ALLBAUGH, Director, )  
 )  
 Respondent. )

## ORDER ADOPTING REPORT AND RECOMMENDATION

Petitioner filed the present action pursuant to 28 U.S.C. § 2254 challenging the constitutionality of his state court convictions. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B), the matter was referred to United States Magistrate Judge Gary M. Purcell, who entered a Report and Recommendation (“R&R”) on September 18, 2017. Judge Purcell recommended the Petition be denied. Petitioner has filed an objection.

The substantive facts and law are accurately set out in Judge Purcell’s R&R and there is no purpose to be served in repeating them yet again. Only one portion of Petitioner’s objection is worthy of mention. Petitioner argues there was insufficient evidence to support his conviction and that Judge Purcell erred in his consideration of this issue. On this matter, Petitioner misapprehends the posture of this case. The question is not whether or not there was sufficient evidence; rather, the question was whether in reviewing his claim about the sufficiency of the evidence, the Oklahoma Court of Criminal Appeals properly applied the relevant Supreme Court jurisprudence to evaluate that claim. As Judge Purcell noted, the Oklahoma Court of Criminal Appeals properly applied Jackson

v. Virginia, 443 U.S. 307 (1979), to find that the evidence was sufficient to support the jury's finding of guilt. Petitioner's arguments to the contrary, as noted by Judge Purcell, rely on a different version of the facts and do not demonstrate that the Oklahoma Court of Criminal Appeals' analysis was improper. Indeed, at this stage, the Court does not consider the credibility of witnesses or weigh conflicting evidence. See Valdez v. Bravo, 373 F.3d 1093, 1097 (10th Cir. 2004), and Messer v. Roberts, 74 F.3d 1009, 1013 (10th Cir. 1996). In short, Petitioner has failed to demonstrate, and cannot demonstrate, that the matters he challenges in this habeas action were decided in a manner that was contrary to or an unreasonable application of Supreme Court law. Accordingly, habeas relief is not warranted.

As set forth more fully herein, the Court adopts, in full, the Supplemental Report and Recommendation of the Magistrate Judge (Dkt. No. 21), and the petition for writ of habeas corpus is denied. A separate judgment will issue.

IT IS SO ORDERED this 29th day of September, 2017.



ROBIN J. CAUTHRON  
United States District Judge